

DEC 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ENRIQUE CASTILLO-CRUZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-70824

Agency No. A79-386-883

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007 **

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Enrique Castillo-Cruz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order affirming, without opinion, an Immigration Judge's decision denying his application for cancellation of removal.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the agency's continuous physical presence determination for substantial evidence. *See Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006). We grant the petition for review and remand.

An intervening change in the law requires us to remand on the issue of continuous physical presence. In *Ibarra-Flores*, we held that administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the terms of the departure and knowingly and voluntarily accepts the terms of departure. *See Ibarra-Flores*, 439 F.3d at 619; *see also Tapia v. Gonzales*, 430 F.3d 997, 1004 (9th Cir. 2005). In the record, there is no indication that Castillo-Cruz was informed of the terms of his departure or that he accepted them voluntarily or knowingly, and the agency did not have the benefit of our decisions in *Ibarra-Flores* and *Tapia* at the time it addressed this issue.

Accordingly, we grant the petition for review and remand for further proceedings consistent with *Ibarra-Flores* and *Tapia*.

We grant respondent's motion for leave to file supplemental brief out of time and instruct the clerk to file the brief received on November 20, 2007.

PETITION FOR REVIEW GRANTED; REMANDED.